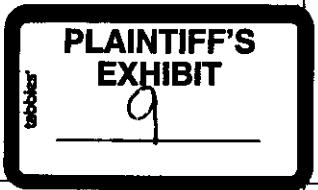


1  
IN THE UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA3  
-----  
4 EVELYN L. MCKINLEY, )  
5 Plaintiff, )  
6 vs. ) Civil Action  
7 HONORABLE LES BROWNLEE, ) No. 04-222 E  
8 ACTING SECRETARY OF THE )  
9 ARMY, )  
Defendant. )  
10 -----  
11  
1213 DONALD WHETZEL, a witness herein,  
14 called on behalf of the Plaintiff for  
15 examination, taken pursuant to the Federal  
16 Rules of Civil Procedure, by and before Denise  
17 E. Grumski, Registered Professional Reporter  
18 and Notary Public in and for the Commonwealth  
19 of Pennsylvania, at 99th RSC ECS #103(G), 6467  
20 Mike Wood Boulevard, Conneaut Lake,  
21 Pennsylvania, on Wednesday, July 20, 2005 at  
22 11:07 a.m.A large, diagonal, black ink stamp reading "ORIGINAL" in a bold, sans-serif font. To the left of the text is a small, stylized drawing of a document or scroll.23  
-----  
24  
25A rectangular black stamp with the words "PLAINTIFF'S" and "EXHIBIT" stacked vertically in white capital letters. A small number "9" is handwritten below the stamp.

1 D. Whetzel - by Mr. Sanders

2 Have you had a chance to do that?

3 A. Yes.

4 Q. Turn to the last page, if you would, of  
5 Exhibit 1. Is that your signature?

6 A. Yes.

7 Q. Is that also you dating it 29, January,  
8 '96?

9 A. Yes.

10 Q. Go back to Page 1, if you would, and  
11 Mr. Kovac and I would refer to the blackout as  
12 redacting your address. Is this document a  
13 letter to you dated January 26th of '96?

14 A. Yes.

15 Q. Is it coming out of Fort McCoy?

16 A. Yes, it is.

17 Q. I assume, and I don't want to assume  
18 anything, but you've never been to Fort McCoy;  
19 have you?

20 A. No.

21 Q. Now, at the time that you got this  
22 January 26, '96 letter offering you the  
23 position of maintenance administrative clerk,  
24 GS-303-05, you were deployed and working full  
25 time, were you not, in what you and I would

1 D. Whetzel - by Mr. Sanders

2 call New Castle, PA?

3 A. Yes.

4 Q. Just prior to this, you had injured  
5 yourself; had you not?

6 A. Yes.

7 Q. Tell us, if you would, what part of the  
8 body you injured?

9 A. In 1994 I was in a bad accident, and I  
10 crushed the right side of my face, broke the  
11 orbital bone, crushed my thyroid. They took a  
12 bone out of my hip, put in a disk, nerve block  
13 to the right side of my leg.

14 Q. That kept you off work for one plus  
15 years?

16 A. Yeah, about a year and a half.

17 Q. At the time you were off, you were  
18 receiving workers' compensation benefits?

19 A. Yes.

20 Q. And just for the record, you are a male  
21 individual, of course?

22 A. Yes.

23 Q. Now, is this letter addressed to you,  
24 Donald E. Whetzel?

25 A. Yes.

1 D. Whetzel - by Mr. Sanders

2 Q. And the subject is called offer for  
3 continued employment?

4 A. Yes.

5 Q. Look at the first paragraph and tell  
6 me, Mr. Whetzel, do you agree that at the time  
7 you had that horrific accident in '94 you were  
8 a heavy mobile equipment repairer?

9 A. Yes.

10 Q. And you know Evelyn McKinley obviously;  
11 right?

12 A. Yes.

13 Q. You know her to have been a heavy  
14 mobile equipment repairer; do you not?

15 A. Yes.

16 Q. Did you know Eve, Don, when you worked  
17 in New Castle? Did you work with her in New  
18 Castle?

19 A. I've heard of Eve, but I never knew her  
20 personally.

21 Q. You came to know her personally when  
22 she started training you to work here in  
23 Geneva; is that correct?

24 A. Yes.

25 Q. Is that the first time you ever met

1 D. Whetzel - by Mr. Sanders

2 Q. You did?

3 A. Yes.

4 Q. Tell me about that. What work did you  
5 do in New Castle on a computer?

6 A. I ordered parts for the facilities.

7 Q. So that was your primary position, job  
8 responsibility, was ordering parts?

9 A. Yes. I worked in the parts room.

10 Q. Do you work in the parts room  
11 currently?

12 A. No.

13 Q. Now, at some point in time, if I  
14 remember your testimony you gave me in '03, you  
15 got a message or a call from Al Morell that  
16 there was an opening for you to come to Geneva?

17           A. He called me and told me there was an  
18           opening here for the administrative job they  
19           have there.

20 Q. And the phone call you got from Al  
21 Morell, do you remember what year it was? Was  
22 it '99?

23 A. I honestly couldn't tell you.

24 Q. When you got the phone call, Morell had  
25 already left you in New Castle and gone up to

1 D. Whetzel - by Mr. Sanders

2 Geneva; had he not?

3 A. Yes.

4 Q. Or was he in Franklin at the time; do  
5 you know?

6 A. No. He was in Geneva.

7 Q. And he was now in Geneva at the time of  
8 the call, and he was officing out of this  
9 office we're in today for the deposition?

10 A. Yes.

11 Q. Is it true that you never filled out an  
12 application, an actual document, a formal  
13 application, for the new clerk position, supply  
14 clerk position, you now have; is that a true  
15 statement?

16 A. Again, I honestly can't remember  
17 whether I did or not.

18 Q. Well, I had asked for your file in this  
19 case, and we have what they call a  
20 confidentiality agreement. So these documents  
21 and medical records have all been provided to  
22 me and will not go beyond anyone in this case,  
23 and I did not see a formal application.

24 So as you sit here today, do you have a  
25 distinct recollection as to filling out an

1 D. Whetzel - by Mr. Sanders  
2 application for the job you have here in  
3 Geneva?

4 A. Not right off the top of my head. I  
5 got a call from Mr. McCandless at the 99th  
6 telling me that I received the call.

7 Q. I understand that, and you told me that  
8 in '03, too, when I met you. But I'm asking  
9 you, other than the phone call from Morell and  
10 the confirming phone call from McCandless, the  
11 next thing you knew you were working in Geneva;  
12 is that correct?

13 A. Yes.

14 Q. Now, did you have to sell your home and  
15 move to another home in order to take the  
16 Geneva position?

17 A. No.

18 Q. Where were you living; closer to the  
19 New Castle job or the Geneva job?

20 A. They were both about the same distance.

21 Q. I don't want to know the address, but  
22 where do you live out of?

23 A. Grove City.

24 Q. Now, when you were in New Castle last,  
25 whatever that year was -- well, according to

1 D. Whetzel - by Mr. Sanders  
2 the records I have it was 2000 that you came up  
3 to Geneva. Do you remember that?

4 A. Yes.

5 Q. And at the time you got up here to do  
6 the supply clerk job, Eve McKinley was doing  
7 it; was she not?

8 A. Yes.

9           Q. How long did she spend training you on  
10          the computer here before she went back to her  
11          mechanic job approximately? Two weeks sound  
12          right?

13 A. Yeah, probably. Yes, I would say so.

14 Q. Could you tell me, if you remember, the  
15 name of the person who replaced you in New  
16 Castle as the maintenance administrative clerk?

17 A. I don't know. I honestly don't know.

18 Q. If I tell you that no one replaced you,  
19 do you know that to be true?

20 A. No, I don't.

21 Q. Have you ever been back to New Castle  
22 since you came up here in 2000?

23 A. Yeah. I stopped in a couple times to  
24 visit.

Q. And you're telling me you never learned

1 D. Whetzel - by Mr. Sanders  
2 one way or the other who took over your job in  
3 New Castle?

4 A. No, I don't.

5 Q. Is that facility still open?

6 A. Yes.

7 Q. And you were basically a parts room  
8 ordering parts person?

9 A. Yes.

10 Q. And you did that for the balance of  
11 '96, all of '97, all of '98, all of '99, and  
12 then you came up here?

13 A. Yes.

14 Q. And you've been doing that job up here  
15 since Eve last trained you in early 2000?

16 A. Yes.

17 Q. When you work here, do you get pay  
18 increases or incremental increases?

19                   A. I get the same as the regular  
20 mechanics, only I get half their raise.

21 Q. So whatever the mechanics get, you get  
22 half of it?

23 A. Yes.

24 Q. Now, do you know that to be a fact that  
25 that actually is what's going on because you

1 D. Whetzel - by Mr. Sanders  
2 were once a mechanic or because of what you  
3 know by working up here?

4 A. I don't understand you.

5 Q. That's one of those cases. Great. How  
6 do you know, Don Whetzel, that you're getting  
7 the correct increase, actually know it for a  
8 fact, that you're getting the correct increase  
9 up here since you got here in early 2000? How  
10 do you know that? In other words, does Don  
11 Whetzel go talk to a mechanic and say what's  
12 your increase, and then you check to see if  
13 yours is half of it, or you just assume that's  
14 what's happening?

15                   A. That's what I assume is happening.  
16                   That's what I was told; I would get half the  
17                   increase.

18 Q. Have you got increases since you  
19 started up here in 2000?

20 A. Yes.

21 Q. You file tax returns every year I hope?

22 A. Yes.

23 Q. So we're in '05. The last tax year  
24 would have been '04. Did you file one?

25 A. Yes.

1 D. Whetzel - by Mr. Sanders

2 Q. Ball park me. Was it \$40,000 salary  
3 plus for '04? Was it 30,000 salary plus?

4 A. About 40 thousand.

5 Q. 40,000?

6 A. Yes.

7 Q. Plus?

8 A. (Witness nods head affirmatively.)

9 Q. And is that \$40,000 plus that you're  
10 making now more than you made as your last time  
11 in '96 as a mechanic or '94 when you had that  
12 horrific accident? Are you making more now as  
13 a supply clerk than you made when you last were  
14 a mechanic?

15 A. Well, yes, with the raises and things,  
16 yes.

17 Q. Forget about raises. Base wise, did  
18 you ever make \$40,000 a year when you were a  
19 mechanic before the horrific accident of '94?

20 A. No.

21 Q. Now, when you got here in 2000, my  
22 understanding is that Keener was your boss;  
23 correct?

24 A. No. Perry Wood was my boss.

25 Q. Is Perry still your boss?



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
HEADQUARTERS FORT MCCOY  
SPARTA, WISCONSIN 54656-5000



January 26, 1996

Directorate of Human  
Resource Management

Subject: Offer for Continued Employment

Donald E. Whetzel  
[REDACTED]

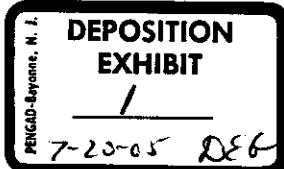
Dear Mr. Whetzel:

Medical documentation from your on-the-job injury indicates that you are physically incapable of performing the duties of your Heavy Mobile Equipment Repairer, WG-5803-09.

We feel that if our injured employees can be employed in another position in which they are able to physically perform, it will be of benefit to both the employee and the United States government. The 99th ARCOM, AMSA 110(G), New Castle, PA, has made a special effort to identify a position with non-strenuous duties which you would be physically capable of performing. Accordingly, this letter constitutes an offer of continued employment in a new position. The following information pertaining to the position is provided for your consideration:

1. POSITION OFFERED: Maintenance Administrative Clerk, GS-5-500-05
2. SALARY: You will be placed in indefinite pay retention at a retained rate of basic pay of \$16.47 per hour. While on pay retention, you would be eligible to receive 50 percent of the amount of each increase in the maximum rate of pay for GS-5. At such time as the maximum rate of pay for GS-5 becomes equal to or exceeds your retained rate of basic pay, you would be placed in that maximum rate and pay retention would cease to apply. Your entitlement to pay retention would also cease if:
  - a. You have a break in service of one or more workdays;
  - b. You are demoted for personal cause or at your request;
  - c. You decline a reasonable offer of a position for which the rate of basic pay is equal to or higher than your retained rate of basic pay.

Whetzel/



0000334

-2-

3. JOB DESCRIPTION: Enclosed is a copy of the Maintenance Administrative Clerk, GS-303-05, job description.

A copy of this letter will be sent to the Office of Workers' Compensation, Gateway Bldg., Room 15200, 3535 Market Street, Philadelphia, PA 19104. If you decline this offer of continued employment, the Department of Labor would determine if you are eligible for compensation. You should contact the Fort McCoy Workers' Compensation Office, (608) 388-2586, with any questions you may have concerning compensation benefits.

You are requested to complete the attached statement indicating whether or not you accept the position offer and return it to this office by close of business February 5, 1996. Failure to respond by February 5, 1996 will be considered a negative reply.

Questions concerning this position offer should be directed to the undersigned at (608) 388-2586.

Sincerely,

  
Richard S. Keller  
Management Employee  
Relations Specialist

Enclosure

Copy Furnished:  
OPF  
99th ARCOM  
OWCP

0000335

X

I accept the position of Maintenance Administrative Clerk, GS-303-05

---

I do not accept the position of Maintenance Administrative Clerk, GS-303-05

Donald E. Whetzel

DONALD E. WHETZEL

27 JAN 96

DATE

0000336